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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,893	10/24/2003	Kent W. Savage	40059-0008	8706
37526	7590	10/06/2005	EXAMINER	
RADER, FISHMAN & GARAUER PLLC 10653 SOUTH RIVER FRONT PARKWAY SUITE 150 SOUTH JORDAN, UT 84095			SHAY, DAVID M	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/692,893	SAVAGE, KENT W.	
	Examiner	Art Unit	
	david shay	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on July 8, 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-85 is/are pending in the application.
- 4a) Of the above claim(s) 26-52 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-25 and 53-85 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant traverses examiner's restriction requirement, asserting that examination of the method claims can be made without serious burden, because of their relatedness to the apparatus claims. Applicant reasons because they are so related that search for an ocular light therapy apparatus would reasonably be expected to cover the subject matter recited in the method claims. The examiner must respectfully disagree, a proper search for the method would necessarily include a search a search in 128/898, which would present a serious burden on the examiner. Therefore, the restriction is deemed proper and is made final.

With regard to the art rejections, applicant argues that the cited references do not teach a "handheld light output device... configured to emit therapeutic ocular light." The examiner first notes that applicant nowhere defines the exact meaning of the term "therapeutic ocular light" in the originally filed specification. Applicant merely makes reference to a preferred luminosity of the source and provides no other parameters for a device that would be considered to emit "therapeutic ocular light". The examiner and further notes that the specification as originally filed discusses several levels of illumination that could be considered "therapeutic ocular light." While, as pointed out in applicants remarks, paragraph [0026] does discuss providing intensities of 2,500 lux, 5,000 lux, and 10,000 lux; later on in paragraph [0040], applicant discusses "an effective range of 1,000 lux to 2,000 lux". Therefore it is clear that a wide range of luminance may be considered "therapeutic ocular light."

The examiner respectfully submits that the references applied to the claims are clearly inherently able to produce luminous fluxes in these ranges. In support of this contention, the

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examiner submits the reference to Yadid-Pecht, which clearly teaches that normal indoor lighting produces between 100 and 1,000 lux and that sunlight may reach 100,000 lux. Therefore, these lamps, which produces sufficient illumination for vision, must produce at least 10,000 lux on a human face or eye in close proximity to the lamp itself. Therefore placing the eye as close to the lamp as possible, would produce an illumination level high enough to be considered "therapeutic ocular light" as it is defined in the specification

With regard to the arguments directed to Marsh, applicant's arguments that the device of Marsh uses less power than low intensity light sources, is not convincing. A careful reading of marsh shows for example, the figures 13 and 14 and figures 20 and 21 show respectively, the use of Marsh's invention in a traffic light and general lighting applications. Clearly both of these applications require a luminance of greater than 10,000 lux on a human face or eye in close proximity to the lamp itself, and thus the device is capable of producing "therapeutic ocular light"

With regard to Kuelbs, quoting from the abstract thereof, applicant clearly states that the device of Kuelbs includes "an integral lighting system for providing **high-intensity** outdoor lighting" (emphasis added), clearly, this high-intensity lighting will provide greater than 10,000 lux and thus is capable of producing "therapeutic ocular light." The mere fact that Kuelbs (or Marsh or Bamber et al) does not mention therapy does not prevent the light from being used for this purpose or being capable of being used for this purpose, if so desired.

Regarding the combination rejection, applicant argues that both Whitcher and Arao do not produce "therapeutic ocular light", however, as the device of Whitcher is intended to be used in a lighted area, the luminance of the display screen must be sufficiently great so as to exceed

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the surrounding lighting for example indoor lighting, which is of approximately a level of 1,000 lux as taught by Yadid-Pecht. Thus inherently the device of Whitcher will produce luminances which qualify as "therapeutic ocular light" as disclosed in applicant's originally filed disclosure.

With regard to the dependent claims, applicant argues that Kuelbs, the sole reference upon which the rejection of claim 10 is based, does not teach the use of a lens. Applicant also argues that Kuelbs "does not disclose, teach, or suggest a lens for diffusing light emitted from the light assembly." (See applicant's arguments, page 17, first full paragraph, first sentence, emphasis in original). The examiner must respectfully disagree. Applicant's attention is respectfully invited to column 10, lines 9 through 14, and lines 51 through 56, wherein it is clearly disclosed with respect to figures 4A and 4C and elements 405 and 505 respectively. That these elements "may have a smooth surface or be textured to accentuate or enhance the light from the bulbs" this structure is considered to constitute a lens as it modifies the light output in a desired way. It is noted that applicant argues, the term "a lens for diffusing light" as though the functional phrase "for diffusing light" modifies the term "lens" in such a way as to qualify the structure thereof. Applicant is respectfully reminded that MPEP 2181 clearly states that in order for a functional recitation to carry structural weight, it must be preceded by the term "means".

JRW
9/23/2005

With respect to claim 18, applicant argues, with reference to the examiner's taking of official notice regarding the use of screensavers as the power saving devices in computers that these things "have nothing to do with a manual timer for operating a light therapy device to emit therapeutic ocular light". The examiner must respectfully disagree, as set forth above, the device clearly produces "therapeutic ocular light" inasmuch as such a thing is defined in the originally filed disclosure. Further, applicant gives no structure with regard to the disclosed manual timer

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and thus given that the time before the start of a screensaver is user settable and as this time setting is done by hand, as computers are not currently capable of receiving such commands by thought, official notice of which is hereby taken, this is considered to fall within the broadest reasonable interpretation of the term "manual timer device" (see MPEP 2111 and In re Hyatt, 211 F. 3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir.)). Thus this argument is not convincing and claim 18 is properly rejected by the art applied thereto. Regarding applicant's request that the examiner, should he continue to rely upon the taking of official notice provide documentary evidence pursuant to MPEP 2144.03, please note the pages supplied from the HP Jornada 700 Series Handheld PC Users Guide, which expressly teaches the manual setting of the display intensity and display turnoff times.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "hardware in the data processor" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The amendment filed July 8, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "hardware in the data processor".

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 81 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure is silent on "hardware in the data processor".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 58, 59, 62, 63, 65-68, 78, and 79 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 58, 59, 62, 63, 65-68, 78, and 79 are indefinite as they fail to further limit the claim from which they depend, as what further structural limitation is intended to be expressed by claiming the type of data input or the devices the processor is envisioned to control and the manner in which it is envisioned to control them is unclear and therefore what further limitation is intended to be implied is unclear.

Claims 1, 12, 19, and 53-57 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bamber et al.

Elements 15 and 16 are each light sources.

Claims 1-5, 11, 13, 18-21, 24, and 53-57 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Marsh.

See figures 3-15; column 1, line 54 to column 4, line 39 and column 8, line 65 to column 12, line 22.

Claims 1-4, 7-13, 19, 21, 24, 53-57, 70-75, and 83-85 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Kuelbs.

See figures 1-4C, 10 and 11; column 1, line 30-60; column 3, lines 49 to column 10, line 68; column 14, line 28 to 65; and column 16, lines 19 to 45.

Claims 1, 2, 4-6, 13-18 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcher et al in combination with Arao et al, HP Jornada 700 Series Handheld PC Users Guide and the admitted prior art that inverters are needed for running CCFLs

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from DC sources. Whitcher et al teach a handheld device which outcast a full range of color; has a battery pack; is computer controlled; and is illuminated by a CCFL. Arao et al teach the use of multiple CCFLs and reflectors in a light output module. It would have been obvious to the artisan of ordinary skill to employ the output device of Arao et al in the device of Whitcher et al, since Whitcher et al teach no particulars of the output device and since the output device of Arao et al is intended to be employed in this type of device (see Figures 25A-C) or, to employ the device of Whitcher et al as the driver for the output of Arao et al, since Arao et al give no details of the driver device shown in Figures 25A-C and since the device of Whitcher et al is shock resistant and versatile, and in either case to include an inverter, since these are needed for running CCFLs from DC sources, official notice of which has already been taken, and to employ standard energy saving features, such as a selectable level of screen illumination and a timer that turns off the display after a predetermined time of inactivity, since this conserves battery power, as thought by HP Jornada 700 Series Handheld PC Users Guide, which display controlling will require controlling the inverter, thus producing a device such as claimed.

Claims 58-69 and 76-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcher et al in combination with Terman et al. Whitcher et al teach a handheld device which outcast a full range of color; has a battery pack; is computer controlled; and is illuminated by a CCFL. Terman et al teach the use of a computer to control lighting as claimed. It would have been obvious to the artisan of ordinary skill to employ the programming, lighting, and control devices of Terman et al in the device of Whitcher et al, since Whitcher et al teach no particulars of the programming or peripherals, or to employ the device of Whitcher et al as the driver for the output of Terman et al, since Terman et al teach that any type of driver device can be used and

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since the device of Whitcher et al is shock resistant and versatile, and in either case to employ a clamshell case, as these are notorious in the art for smaller computers, e.g. lap tops or handhelds such as the HP Jornada 720, as they protect the display and keep the keyboard dry and clean during periods when the device is not being employed for input or display, official notice of which is hereby taken, thus producing a device such as claimed.

Applicant's arguments filed July 8, 2005 have been fully considered but they are not persuasive. The arguments are not persuasive for the reasons set forth above.

Applicant's arguments with respect to claims 53-85 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader, can be reached on Monday, Tuesday, Thursday, and Friday at (571) 272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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